

AMENDED IN ASSEMBLY MAY 8, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 448

Introduced by Assembly Member Arambula

February 16, 2007

An act to amend Sections 98 and 1194.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 448, as amended, Arambula. Compensation recovery actions: liquidated damages.

Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation and to determine all matters arising under his or her jurisdiction.

This bill would permit employees to recover liquidated damages in complaints brought before the Labor Commission alleging payment of less than the state minimum wage.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 98 of the Labor Code is amended to read:
- 2 98. (a) The Labor Commissioner is authorized to investigate
- 3 employee complaints. The Labor Commissioner may provide for
- 4 a hearing in any action to recover wages, penalties, and other
- 5 demands for compensation, including liquidated damages, properly
- 6 before the division or the Labor Commissioner, including orders

1 of the Industrial Welfare Commission, and shall determine all
2 matters arising under his or her jurisdiction. It is within the
3 jurisdiction of the Labor Commissioner to accept and determine
4 claims from holders of payroll checks or payroll drafts returned
5 unpaid because of insufficient funds, if, after a diligent search, the
6 holder is unable to return the dishonored check or draft to the payee
7 and recover the sums paid out. Within 30 days of the filing of the
8 complaint, the Labor Commissioner shall notify the parties as to
9 whether a hearing will be held, whether action will be taken in
10 accordance with Section 98.3, or whether no further action will
11 be taken on the complaint. If the determination is made by the
12 Labor Commissioner to hold a hearing, the hearing shall be held
13 within 90 days of the date of that determination. However, the
14 Labor Commissioner may postpone or grant additional time before
15 setting a hearing if the Labor Commissioner finds that it would
16 lead to an equitable and just resolution of the dispute.

17 It is the intent of the Legislature that hearings held pursuant to
18 this section be conducted in an informal setting preserving the
19 right of the parties.

20 (b) When a hearing is set, a copy of the complaint, which shall
21 include the amount of compensation requested, together with a
22 notice of time and place of the hearing, shall be served on all
23 parties, personally or by certified mail, or in the manner specified
24 in Section 415.20 of the Code of Civil Procedure.

25 (c) Within 10 days after service of the notice and the complaint,
26 a defendant may file an answer with the Labor Commissioner in
27 any form as the Labor Commissioner may prescribe, setting forth
28 the particulars in which the complaint is inaccurate or incomplete
29 and the facts upon which the defendant intends to rely.

30 (d) No pleading other than the complaint and answer of the
31 defendant or defendants shall be required. Both shall be in writing
32 and shall conform to the form and the rules of practice and
33 procedure adopted by the Labor Commissioner.

34 (e) Evidence on matters not pleaded in the answer shall be
35 allowed only on terms and conditions the Labor Commissioner
36 shall impose. In all these cases, the claimant shall be entitled to a
37 continuance for purposes of review of the new evidence.

38 (f) If the defendant fails to appear or answer within the time
39 allowed under this chapter, no default shall be taken against him
40 or her, but the Labor Commissioner shall hear the evidence offered

1 and shall issue an order, decision, or award in accordance with the
2 evidence. A defendant failing to appear or answer, or subsequently
3 contending to be aggrieved in any manner by want of notice of the
4 pendency of the proceedings, may apply to the Labor
5 Commissioner for relief in accordance with Section 473 of the
6 Code of Civil Procedure. The Labor Commissioner may afford
7 this relief. No right to relief, including the claim that the findings
8 or award of the Labor Commissioner or judgment entered thereon
9 are void upon their face, shall accrue to the defendant in any court
10 unless prior application is made to the Labor Commissioner in
11 accordance with this chapter.

12 (g) All hearings conducted pursuant to this chapter are governed
13 by the division and by the rules of practice and procedure adopted
14 by the Labor Commissioner.

15 (h) (1) Whenever a claim is filed under this chapter against a
16 person operating or doing business under a fictitious business
17 name, as defined in Section 17900 of the Business and Professions
18 Code, which relates to the person's business, the division shall
19 inquire at the time of the hearing whether the name of the person
20 is the legal name under which the business or person has been
21 licensed, registered, incorporated, or otherwise authorized to do
22 business.

23 (2) The division may amend an order, decision, or award to
24 conform to the legal name of the business or the person who is the
25 defendant to a wage claim, if it can be shown that proper service
26 was made on the defendant or his or her agent, unless a judgment
27 had been entered on the order, decision, or award pursuant to
28 subdivision (d) of Section 98.2. The Labor Commissioner may
29 apply to the clerk of the superior court to amend a judgment that
30 has been issued pursuant to a final order, decision, or award to
31 conform to the legal name of the defendant, if it can be shown that
32 proper service was made on the defendant or his or her agent.

33 SEC. 2. Section 1194.2 of the Labor Code is amended to read:

34 1194.2. (a) In any action under Section 98, 1193.6, or Section
35 1194 to recover wages because of the payment of a wage less than
36 the minimum wage fixed by an order of the commission, an
37 employee shall be entitled to recover liquidated damages in an
38 amount equal to the wages unlawfully unpaid and interest thereon.
39 Nothing in this subdivision shall be construed to authorize the

1 recovery of liquidated damages for failure to pay overtime
2 compensation.

3 (b) Notwithstanding subdivision (a), if the employer
4 demonstrates to the satisfaction of the court *or the Labor*
5 *Commissioner* that the act or omission giving rise to the action
6 was in good faith and that the employer had reasonable grounds
7 for believing that the act or omission was not a violation of any
8 provision of the Labor Code relating to minimum wage, or an order
9 of the commission, the court *or the Labor Commissioner* may, ~~in~~
10 *its as a matter of* discretion, refuse to award liquidated damages
11 or award any amount of liquidated damages not exceeding the
12 amount specified in subdivision (a).

13 (c) This section applies only to civil actions commenced on or
14 after January 1, 1992.